TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 515.

S. W. VANCE, W. N. BAHR, AND J. M. SCOTT, PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED NOVEMBER 23, 1897.

(16,728.)

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1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *District of South Carolina,* } *To wit:*

In the Circuit Court, Fourth Circuit. At Law.

At a circuit court of the United States for the fourth circuit in and for the district aforesaid, on the first Monday in August, A. D. 1897, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding said court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

Be it remembered that heretofore, to wit, on the 11th day of May, A. D. 1897, appeared the said plaintiff, The W. A. Vandercook Company, in the aforesaid circuit court, by its attorneys, Messrs. Bryan & Bryan, and filed its complaint; which complaint is in the words and tenor following:

2 *Complaint.*

UNITED STATES OF AMERICA, *District of South Carolina.*

Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

The plaintiff above named, complaining of the defendants above named, alleges:

1. That the plaintiff was at the times hereinafter mentioned and is now a corporation created by and under the laws of the State of California, having its principal place of business in the city of Alameda, State of California.

2. That the defendants were at the times hereinafter mentioned and are now citizens and residents of the State of South Carolina.

3. That the plaintiffs are proprietors and owners of certain vineyards in the State of California, known as the vineyards in the San Gabriel, Santa Clara, Fresno, Sonoma, and Napa valleys, and producers of wines and brandies and other liquors from the grapes of such vineyards.

4. That in the month of February and early part of March, 1897, the plaintiff, by its travelling agent, Robert Randolph Turner,

a citizen of the State of Virginia, contracted with and took the orders of certain citizens of the State of South Carolina, residing in the city of Charleston, to deliver to each of the same in the city of Charleston certain packages of wines and brandies, products of the plaintiff's vineyards, then and there agreed upon and ordered by the said residents respectively in the said city
3 of Charleston, and in pursuance thereof plaintiff filled said orders and shipped, on 20th day of March, 1897, from San Francisco, California, by the Southern Pacific R. R. ("Sunset") route, to its agent in the city of Charleston, S. C., one car-load of such wines, &c., products of plaintiff's vineyards as aforesaid, the wine for each of said customers of plaintiff in the city of Charleston, as ordered, being in separate original packages in said car contained to the number of seventy-three (73) packages, more particularly set forth in the schedule marked "A" and hereto annexed and made part of this complaint, and of the value of twelve hundred dollars.

5. That on or about the 16th day of April, 1897, the said car-load of wines, &c., as aforesaid, arrived at its destination at Charleston, South Carolina, at the depot of the South Carolina and Georgia Railroad Company, an interstate common carrier between the city of Augusta, in the State of Georgia, and the city of Charleston, in the State of South Carolina, and the last connecting railroad common carrier in the continuous carriage of said goods from the city of San Francisco, in the State of California, to the city of Charleston, S. C., and while in the depot of and in the custody of said South Carolina and Georgia Railroad Company, as aforesaid, at Charleston, South Carolina, the said defendants, W. N. Bahr and J. M. Scott, claiming to act as State constables under the said act of the General Assembly of South Carolina approved March 6, 1896, and — March 5, 1897 (dispensary law), unlawfully and wrongfully seized without warrant the said seventy-three (73) packages and stopped the delivery thereof; and thereafter, on the 19th day of April, 1897, without warrant took and carried away from the depot of the said South Carolina and Georgia Railroad Company, in the city of Charleston, sixty of the packages of said wines, &c., more particularly set forth in schedule marked "B," hereto annexed and made part of this complaint, of the value of eight hundred dollars, and shipped the same on the 19th April, 1897, to one John T. Gaston, then claiming to act as "State commis-
4 sioner" under said "dispensary law," as aforesaid; and thereafter, on or about the 22nd April, 1897, said sixty packages (as set forth in Exhibit "B") came into the possession of the defendant S. W. Vance, claiming then and now to act as "State commissioner" under said dispensary law, with full notice of said trespass, and who now unlawfully refuses and has repeatedly refused to return said wines, packages, &c., and that on the 28th day of April, 1897, the said defendants, W. N. Bahr and J. M. Scott, seized and carried away from the custody of the South Carolina and Georgia Railroad Company, interstate common carrier at Charleston, S. C., eight packages of wine and brandy, property of the plain-

tiff, shipped from San Francisco, California, to its agent at Charleston, S. C., for the customers of the plaintiff on like orders so obtained by its traveling agent, all of said packages being contained in separate original packages and set forth in Exhibit "C," hereto annexed as part of this complaint, all of which said eight packages have come into the possession of the said defendant, S. W. Vance, with notice of said malicious trespass, and who now unlawfully detains the same and refuses to return the same on demand.

6. Plaintiff further alleges that it is entitled to the immediate possession of said packages of wine, &c., as aforesaid; that the seizing and carrying away forcibly of the said sixty-eight packages, as aforesaid, was done without warrant of law, but, on the contrary, under pretense of legal authority well known by the said defendants to be utterly pretensive, null, and void, to wit, under pretence of authority of an act of the General Assembly of the State of South Carolina, generally known as the dispensary law, approved March 6, 1896, and amended by an act March 5, 1897, to which reference in full is prayed, which said act, in so far as it attempts to abridge the right of the plaintiff to exercise its lawful trade and calling with the citizens of the State of South Carolina, and to have trade and commerce, intercourse and traffic with said citizens and residents in the products of its vineyards, as aforesaid, is not an act enacted in the lawful exercise of the police power of the State of South Carolina, and is a restriction and regulation of commerce between the States and foreign nations, and is in conflict with article I, sections 8 and 9, of the Constitution of the United States and laws of Congress made thereunder, and is unconstitutional, null, and void.

7. That previous to said seizure by defendants, as aforesaid, of such packages of wine, &c., to wit, on the — day of April, 1897, and again after such seizure, to wit, on the — day of April, 1897, again on the — day of April, 1897, and at other times, plaintiff repeatedly gave notice to the defendants of their wrongful and malicious trespass in seizing said packages of wine, and notified said defendants to desist from their unlawful restraint of interstate trade and commerce, well known to said defendants as a gross violation of this plaintiff's rights under the Constitution of the United States, and further warned said defendants that plaintiff would hold them responsible for such malicious trespass by all the penalties of law for plaintiff's redress and punishment of their wrong-doing, and demanded immediate return of said sixty packages of wine, as aforesaid.

8. That notwithstanding such notices and repeated demands of the plaintiff, and notwithstanding the known rights of the plaintiff secured to it by the Constitution and laws of the United States, the said defendants forcibly seized and carried away said packages of wine, as aforesaid, and do now detain the same, and all these unlawful acts they did knowingly, wrongfully, wilfully, and maliciously, with intent to oppress and humiliate and intimidate this plaintiff and make it afraid to rely upon the Constitution and laws of the United States and the judicial power thereof for its protec-

tion in those rights, privileges, and immunities secured to the plaintiff by the Constitution and laws of the United States.

9. The plaintiff further alleges that the said defendants by the said malicious trespass and wrongful detainer, as aforesaid, intended to make an example of the plaintiff and thereby deter it and others from exercising its and their rights and privileges secured
6 by the Constitution and laws of the United States, and to deter it and others from relying upon the Constitution of the United States and the judicial power thereof for the protection of those rights guaranteed by the Constitution of the United States, and that, in contempt of and in defiance of the said Constitution and laws of the United States and of the said judicial power thereunder, the defendants seized and detained, as aforesaid, the said packages of wine, by reason whereof plaintiff's said rights were grossly and continuously violated and abused.

10. That defendants well knew when they made such seizure and committed said trespass and continue, in such wrongful detainer, as aforesaid, that the said trespass, seizure, and detainer was unlawful and forbidden by the Constitution and laws of the United States, but the said defendants did so, trusting and believing that they would be protected from all harm by their official superiors in the State of South Carolina, and that they made such seizure and committed such trespass and detainer wilfully and maliciously, with the purpose and intent to trample on the plaintiff's right under the law and to do it all the injury in their power.

11. That by said malicious trespass of said defendants and their continuation in the wrongful detention of said sixty-eight packages of wine the plaintiff has been greatly injured in its lawful trade and business with the citizens and residents of the State of South Carolina to its great hurt and damage in the breaking up of such trade and commerce.

12. That the value of the said packages of wine is the sum of one thousand dollars; by reason of which wrongs plaintiff has been injured to its damage ten thousand dollars.

Wherefore plaintiff demands judgment against the defendants for the recovery of possession of said sixty-eight packages of wine, as aforesaid, or their value, one thousand dollars, in case de-
7 livery thereof cannot be had, and for damages in the sum of ten thousand dollars.

BRYAN & BRYAN,
Pl'ff's Att'ys.

EXHIBIT "A."

41 kegs wine, California.
10 kegs brandy, "
20 cases wine, "
2 cases champagne, California.

73 packages.

All marked "J. S., Charleston, S. C.," and having stamp of W. A. Vandercook, Los Angeles, California.

EXHIBIT "B."

List of Property Sued for—Sixty Packages.

14 cases California wine.
33 kegs California wine.
½ barrel California wine.
1 case champagne (California).
½ case champagne (California).
1 case brandy (California).
9 kegs brandy (California).

All marked ("J. S., Charleston," for private use) and all bearing the stamp "W. A. Vandercook Co., Los Angeles, California.

EXHIBIT "C."

6 cases California wine.
1 keg California claret.
1 keg California brandy.

All marked "J. S., Charleston," and all bearing the stamp of the W. A. Vandercook Co., Los Angeles, California."

8 THE UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared Robert Randolph Turner, agent of the plaintiff above named, who, being duly sworn, makes oath that the above complaint is true to his knowledge, all of the material facts being within the personal knowledge of this deponent.

ROBERT RANDOLPH TURNER.

Sworn to before me this 3rd day of May, 1897.

ARTHUR BRYAN,
[SEAL.] *Notary Public for South Carolina.*

(Filed May 11th, 1897.)

9 *Summons.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
against
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

To S. W. Vance, J. M. Scott, and W. N. Bahr, defendants in this action:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to

serve a copy of your answer on the subscribers at their office, 11 Broad street, Charleston, S. C., on or before the rule day occurring twenty days next after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid the plaintiff will apply to the court for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Charleston, S. C., the seventh day of May, anno Domini one thousand eight hundred and ninety-seven, and in the 121st year of the sovereignty and Independence of the United States of America.

10 BRYAN & BRYAN,
Plaintiff's Attorneys.

J. E. HAGOOD,
[SEAL.] *C. C. C. U. S., Dist. S. C.*

(Filed May 11th, 1897.)

11 *Marshal's Return of Service.*

THE W. A. VANDERCOOK CO.
vs.
S. W. VANCE *et al.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

I hereby certify that on the 11th day of May, A. D. 1897, at Charleston, So. Ca., I served on the above-named J. M. Scott and W. N. Bahr personally the summons and complaint in this action by delivering copies thereof to them personally and leaving the same with them in the city of Charleston, S. C.

H. J. HICKSON,
Office Deputy U. S. M.

Sworn to before me May 18, 1897.

J. E. HAGOOD, *Clerk.*

12 UNITED STATES OF AMERICA,
District of South Carolina.

John T. Thornton, dep. marshal, being duly sworn, says that he has served the within summons and complaint on S. W. Vance, one of defendants named herein, at his place of business, in Columbia, S. C., on the 12th day of May, 1897, by delivering to him personally copies of the same, at the same time exhibiting to him the original; that he knows S. W. Vance to be the defendant named herein, and deponent is not a party to this action.

J. T. THORNTON,
Deputy Marshal.

Subscribed and sworn to before me this 13th May, 1897.
JOHN BAUSKETT, *U. S. Com'r.* [L. S.]

13 *Answer of S. W. Vance.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

The defendant S. W. Vance, by W. A. Barber, attorney general, his attorney, answering the complaint herein, says:

I. He submits that this court has no jurisdiction of the subject-matter and parties in this action.

II. He submits that the complaint does not state facts sufficient to constitute a cause of action.

III. He submits that by the provisions of the dispensary law of South Carolina, approved March 6, 1896, no action of this kind can be maintained against this defendant, who, as State commissioner, is charged with duties under the said law.

IV. He submits that if the action can be maintained there is a misjoinder of causes of action, in that the plaintiff sues for the recovery of the possession of personal property, and also for exemplary damages for the commission of trespass in the taking
14 of the same.

The defendant, further answering the said complaint, says:

I. He has no knowledge or information sufficient to form a belief as to the allegations of the 1st, 3rd, and 4th paragraphs of this complaint.

II. He admits the allegations of the 2nd paragraph of the complaint.

III. That as to the allegations of the 5th paragraph of the complaint he knows nothing, except that certain packages of wine and liquors were shipped to him as State commissioner by the State constable, J. M. Scott, from Charleston, S. C., on the 19th day of April, 1897, and which were received by him, as such commissioner, in the due course of transportation, a copy of the bill of lading for which is hereto attached as a part of the answer; that he received sixty packages, as shown in the said bill of lading, and deposited them in the State dispensary, where they now are; that he received from Chief State Constable W. N. Bahr an appraisement of the said packages and contents made by their appraisers on the 19th of April, A. D. 1897, as sworn to by them, a copy of which is hereto attached as a part of this answer; that he did receive, as State commissioner, on the 23rd day of April, 1897, eight other packages of wine and brandy shipped to him by J. M. Scott, State constable, a copy of which bill of lading is hereto attached as a part of this answer; that he holds said packages of wine and liquor as State commissioner under the dispensary law of South Carolina.

That he denies the allegations of the 6th paragraph of the complaint, and is advised and believes that the said wines and liquors were lawfully seized by the State constable and came rightfully and legally in his possession, and that the dispensary law of South Carolina approved March 6, 1896, and amended in March, 1897, under which the said packages were seized and are now held by him as State commissioner, is an act in the lawful exercise of the proper power of the State and is not in conflict with the Constitution of the United States and the acts of Congress.

V. That he admits the allegations of the 7th paragraph of the complaint.

VI. He denies the allegations of the 8th, 9th, 10th, and 11th paragraphs of the complaint.

VII. That as to the allegations of the 12th paragraph of the complaint, as to the value of the wines and liquors now in his possession, he has no knowledge — information except the appraisement made, as aforesaid, and from this it appears that the wines and liquors are not of the value of one thousand dollars.

Defendant further says that he is at present State commissioner, duly appointed and commissioned under the dispensary law of South Carolina, has given the official bond required, and has been since the 15th day of April, 1897, engaged in the discharge of the duties of said office.

WM. A. BARBER,
Att'y Gen'l, Atty's for Defendants.

UNITED STATES OF AMERICA,
State of South Carolina.

Personally appeared before me S. W. Vance, defendant, who, after being duly sworn, says that the foregoing answer is true of his own knowledge.

S. W. VANCE.

Sworn to and subscribed before me this 2nd day of June, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

(Filed June 3rd, 1897.)

Answer of W. N. Bahr and J. M. Scott.

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

The defendants J. M. Scott and W. N. Bahr, by their attorney, W. A. Barber, attorney general, answering the complaint herein, say:

I. They submit that this honorable court has no jurisdiction of the subject-matter and parties in this action.

II. They submit that the complaint does not state facts sufficient to constitute a cause of action.

III. They submit that the plaintiff in this action is not the real party in interest and cannot maintain this action.

IV. They submit that by the provision of the dispensary law of South Carolina, approved March 6, 1896, no action of this kind can be maintained against the defendant, who is State constable and charged with duties under said law.

V. They submit that there is a misjoinder of causes of action in that the plaintiff sues for the recovery of the possession of personal property and also for exemplary damages for the commission of a trespass in the taking of the same.

The defendants, further answering the complainant, say:

I. They deny each and every allegation of the complaint except as is hereafter specifically admitted.

18 II. That they have no knowledge or information sufficient to form a belief as to the allegations contained in the first and third paragraphs of the complaint, and demand proof of same.

III. They admit the allegations of the 2nd paragraph of the complaint.

IV. That as to the allegations of the 4th paragraph of the bill, they have no knowledge or information sufficient to form a belief, except as to those relating to the arrival of seventy-three packages of wine and brandy in Charleston, S. C., about the time therein stated, and they say that the said packages were in one car, and on the waybill all the wines and brandies were consigned to J. C. Simonds, cashier of one of the national banks in said city, and each package was marked "J. C. Simonds," and none of them had the certificate of the State chemist showing the wines and brandies had been analyzed, as required by law. The defendant W. N. Bahr further says that R. R. Turner, the agent of complainant, while soliciting orders in Charleston, S. C., for these wines and brandies, came to his home and stated to him that he had sold a car-load to different parties in the city and intended to ship them in a car-load lot to J. C. Simonds; wherefore respondent advised him not to ship such wines and brandies in one man's name, but to make each individual package separate and to send to each a bill of lading. Turner then remarked he had been shipping to one man before, as he proposed to ship to J. C. Simonds, and had never been molested, and he intended to do so again; that it was about three weeks after this conversation before the car-load arrived and was unloaded in the depot.

V. That as to the allegations of the 5th paragraph, they admit, on or about the 15th day of April, 1897, the car-load of wines and brandies mentioned in said paragraph did arrive at Charles-

19 ton, S. C., about *the* its point of destination, over the South Carolina & Georgia railroad, and that your respondents, as State constables, did hold up seventy-three packages of win- and liquors in the depot of the said railroad for investigation under the

provisions of the dispensary law of South Carolina, and that said packages had arrived in a car, but had been unloaded and the way bill in the possession of the agent of the said railroad was examined and showed that the entire car-load had been consigned to J. C. Simonds, cashier of the First National bank, and each package was marked in his name; that after holding up said wines and brandies your respondent Bahr made inquiry and investigation into the matter, and on the 18th day of April, A. D. 1897, he received through a telegram a message from Messrs. Buist & Buist that they desired to see him at their office, and he immediately went there and found Mr. Henry Buist and J. C. Simonds in the office, and after some conversation he turned over to J. C. Simonds, cashier First National bank, the party to whom the packages had been consigned, the seventy-three packages of wine and brandies held up at the depot of the South Carolina and Georgia railroad, and at the same time telephoned from the said office to the agent of the railroad and notified him that he had so turned over to J. C. Simonds the said packages and asked him to so inform Constable J. M. Scott, who had held them up; that he received a letter from J. H. Vaughn, said agent of the railroad, that the goods consigned to J. C. Simonds had been delivered to him and bill of lading had been surrendered by him, as will appear from said letter hereto attached as Exhibit "A;" that your respondent Bahr, after so releasing and turning over to J. C. Simonds the said packages, saw J. M. Scott, his co-respondent, and was informed by him that the railroad agent was delivering the wines and brandies on order of J. C. Simonds, when he immediately went to the depot and found that several parties had received packages and had
20 removed them from the depot on orders of J. C. Simonds on the payment of the invoice price of same to him; that after learning these facts he again seized the remaining packages left in the depot on the 17th day of April, 1897, had the same appraised, marked, and shipped to S. W. Vance, State commissioner, Columbia, S. C., who now has the possession of same, and a copy of said appraisement, showing number of packages seized and value of same, is hereto attached as a part of this return; that after the seizure of said packages several citizens of Charleston to whom invoices of some of said wine and brandies had been sent came to your respondent Bahr and asked him to endorse the invoices so that they could get the packages from the depot; to all of whom he replied that he had nothing held up in their names and had no authority to endorse the invoices so that they could get the packages from the depot, as all the liquor seized was marked and consigned to J. C. Simonds, and that the railroad agent would not recognize any orders for delivery of same except from J. C. Simonds; that Mr. A. W. Petit, who held one of those invoices and also a notice from J. C. Simonds, cashier, gave to your respondent Bahr the originals, which are hereto attached as a part of this return, and that two other parties, D. Rhode and C. L. Schmanke, also had invoices sent to them through the mail by the complainant, which they gave to him, and they are herewith exhibited; that your respondent Bahr

saw in the possession of Dr. Buist the notice sent to him by J. C. Simonds and the receipt for the money paid to him when order was given on railroad agent for his package; that since the seizure of the sixty packages, to wit, on the 16th day of April, 1897, he did hold up four packages of wine shipped and consigned to E. L. Tessier, Charleston, S. C., at the depot of the South Carolina and Georgia railroad, but released the same after investigation; that subsequently to this he did seize, on the 29th day of April, 1897, eight packages of wine and brandies
21 consigned by the complainant to J. C. Simonds, shipped into Charleston over the South Carolina and Georgia railroad, which said packages Mr. Simonds refused to accept or have anything to do with, and R. R. Turner, the agent of the complainant, made efforts to sell the said packages to parties in Charleston; that upon receiving this information *that upon receiving this information* from parties to whom he made efforts to sell the said packages he then went before R. R. Gilchrist, a magistrate, and took out a warrant and seized said eight packages under same, which were shipped to S. W. Vance, State commissioner, Columbia, S. C., and they deny that the seizure of said sixty packages or the eight packages mentioned herein was unlawful, and they submit that under the dispensary act, approved March 6, 1897, amended by act approved March 26, 1897, they had authority to seize and hold the same, a copy of which said acts is hereto attached.

VI. The- deny the allegations of the 6th paragraph of the complaint and submit that the dispensary act approved March 6, 1896, and amended March, 1897, was enacted in the lawful exercise of the police power of the State of South Carolina and is not a restriction and regulation of commerce between the States and foreign nations and is not in conflict with article I, sections 8th and 9th, of the Constitution of the United States and the acts of Congress and is constitutional.

VII. They admit, as alleged in the 7th paragraph of the complaint, they did receive two letters of about the purport stated, one of the letters being received on the 17th day of April, 1897, and one after the seizure of the said wines and liquors.

VIII. They know nothing about the value of the wines and liquors, but deny tha., according to their best information and knowledge, that their value was one thousand dollars, and they further deny that the plaintiff has been damaged ten thousand dollars.

22 Defendants further say that W. N. Bahr is chief State constable and J. M. Scott is State constable, duly appointed under the dispensary law of South Carolina, and was at the time hereinbefore stated.

Wherefore defendants demand judgment that the complaint be dismissed with costs.

WM. A. BARBER,
Att'y Gen'l, Attorney for Defendants.

UNITED STATES OF AMERICA,
State of South Carolina.

Personally appeared before me W. N. Bahr and J. M. Scott, who, after being respectively and duly sworn, say that the foregoing answer is true of their own knowledge.

W. N. BAHR.
J. M. SCOTT.

Sworn to and subscribed before me this 2nd day June, A. D. 1897.
C. P. TOWNSEND, *Not. Pub.* [L. S.]

(Filed June 3rd, 1897.)

23 *Stipulation to Waive Jury.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiffs,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.
} Action at Law.

It is hereby stipulated and agreed by and between the attorneys of record herein that the issues of fact in the above cause be tried and determined by the court without a jury.

November 19th, 1897.

BRYAN & BRYAN,
Pl'ffs' Att'ys.
WM. A. BARBER,
Att'y Gen'l, Defendants' Att'y.

(Filed Nov. 18th, 1897.)

24 *Findings of Court on Issue Submitted without Jury.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Citizens of the State of South Carolina.

This cause having been, by stipulation between the parties, dated 18th day of November, 1897, filed the 18th day of November, 1897, submitted to the court for trial to determine the issues of facts herein without the intervention of the jury, and said cause having

been heard by the court, now, upon consideration thereof, the court finds the following facts: That the property described in the complaint is the property of the plaintiff, and that the value thereof is the sum of one thousand dollars, and that the damages to the plaintiff from the detention of the said property by the defendants is the sum of one thousand dollars.

As a matter of law, the court finds that the plaintiff is entitled to judgment against the defendants for the recovery of the possession of the said property described in the complaint, or the sum of one thousand dollars, value of said property, in case delivery thereof cannot be had, and for the further sum of one thousand
25 dollars damages.

Let judgment be entered up accordingly.

CHARLES H. SIMONTON,
Circuit Judge.

18th Nov., 1897.

(Filed Nov. 18th, 1897.)

26 *Judgment.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. At Law.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
against
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Citizens of the State of South Carolina, Defendants.
} Judgment by the Court.

This cause having been brought to trial before the circuit court of the United States held on the 18th day of November, 1897, a jury having been waived and issued of fact having been submitted to the court, as appears by the stipulation filed in the record herein, the court having found that the property described in the complaint, to wit:

Sixty-eight packages of California wine and brandies,
14 cases California wine,
33 kegs California wine,
½ barrel California wine,
1 case champagne (California),
½ case champagne (California),
1 case brandy (California),
9 kegs brandy (California),
27 All marked ("J. S., Charleston, for private use,") and all bearing the stamp "W. A. Vandercook Co., Los Angeles, California;"
6 cases California wine,

1 keg California claret,
1 keg California brandy,
All marked "J. S., Charleston," and all bearing stamp of W. A. Vandercook Co., Los Angeles, California;

Is property of the plaintiff, and that the value thereof is the sum of one thousand dollars, and that the damages to the plaintiff by reason of the detention of said property by the defendants is the sum of one thousand dollars, and the costs having been adjudged at fifty $\frac{1}{100}$ dollars, and the court having further ordered that judgment issue according to said finding:

Now, on motion of Bryan & Bryan, attorneys for plaintiff, W. A. Vandercook Company, it is adjudged that the said W. A. Vandercook Company recover of said defendants, S. W. Vance, J. M. Scott, and W. N. Bahr, the personal property above described, to wit:

Sixty-eight packages of California wine and brandies,
14 cases California wine,
33 kegs California wine,
$\frac{1}{2}$ barrel California wine,
1 case champagne (California),
$\frac{1}{2}$ case champagne (California),
1 case brandy (California),
9 kegs brandy (California),
All marked ("J. S, Charleston, for private use,") and all bearing the stamp "W. A. Vandercook Co., Los Angeles, California;"
6 cases California wine,
28 1 keg California claret,
1 keg California brandy,
All marked "J. S., Charleston," and all bearing stamp of the W. A. Vandercook Co., Los Angeles, California, or the value thereof in the sum of one thousand dollars in case a delivery thereof cannot be had, and an additional sum of one thousand dollars damages so found, together with fifty $\frac{1}{100}$ dollars costs.

BRYAN & BRYAN,
Plaintiff's Att'ys.

Taxed costs.
Signed judgment.
Nov. 18th, 1897.
[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

(Filed Nov. 18th, 1897.)

29 *Bill of Exceptions.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. At Law.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff, Defendant in Error,

vs.

S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

Be it remembered that on the — day of November, at the regular term of the said court, begun and holden in the city of Greenville, in and for the district of South Carolina, before Honorable Charles H. Simonton, the issues in the above-stated cause came on to be tried before said judge, presiding in said court, without a jury, plaintiff being represented by Messrs. Bryan & Bryan, his attorneys, and defendants by the Honorable William A. Barber, attorney general of the State of South Carolina, defendants' attorneys.

The evidence of the plaintiff, which is embodied in the following statement, shows the following facts:

30 The deposition of R. R. TURNER on behalf of plaintiff is as follows:

I am travelling agent of The Vandercook Co., plaintiff (a resident and citizen of Virginia).

The plaintiff is a corporation created under the laws of the State of California, and *are* proprietors and owners of a number of vineyards in the State of California, known as "San Gabriel," "Santa Clara," Fresno," "Simono," and "Napa" valleys, and producers of wines and brandies from the grapes thereof. In the months of February and March, 1897, as such travelling agent I took the orders of a number of residents of Charleston, South Carolina, for purchase of certain packages of wines and brandies, products of plaintiff's vineyards, set forth particularly in the complaint and exhibits, and in pursuance of such orders the W. A. Vandercook Co., on the 20th day of March, 1897, shipped the same from San Francisco, consigned to their agent, J. Simonds, cashier First National bank, at Charleston, South Carolina, in seventy-three separate original packages, each package to be delivered by its agent to person ordering same, and making a car-load lot of the value of twelve hundred dollars. This car-load of wines arrived in Charleston on 16th April, 1897, and while in depot of South Carolina and Georgia Railroad Company at Charleston were seized by defendants W. N. Bahr and J. M. Scott, without warrant, and delivery of the same were stopped. Sixty packages, of the value of eight hundred dollars, as set forth in Exhibit "B," were taken away from the depot by defendants and shipped to defendant S. W. Vance at Columbia, claiming to act as "commissioner," who received same about 22nd April, 1897, with

full notice of the trespass as above; and on the 29th April, 1897, the defendants Bahr and Scott seized at said railroad depot
31 at Charleston, S. C., eight other original unbroken packages of wines and brandies, as set forth in Exhibit "C" of the complaint, of the value of two hundred dollars, products of plaintiff's vineyards, and shipped by plaintiff to Charleston, S. C., to its agent, on like orders of its customers, for delivery to them, and the same were sent to Columbia, S. C., to S. W. Vance, defendant, who received them with full notice of the trespass; that after repeated demand and warning the said S. W. Vance and other defendants refused to return any of the said packages; that said seizure and detention were wilfully, knowingly, and maliciously done and continued; that defendants were notified by Bryan & Bryan, counsel for W. A. Vandercook Co., as follows:

By the following letters and telegrams received by defendants:

32 *Letter.*

APRIL 17, 1897.

Mr. W. N. Bahr (individually), Charleston, S. C.

DEAR SIR: We are informed by the public press that yesterday, claiming to act as a State constable, you entered the South Carolina & Georgia Railroad station, Charleston, S. C., and seized a number of packages of wines and liquors then in said depot and in due course of transportation from the W. A. Vandercook Co., California, to their several consignees marked thereon, Charleston, S. C.

You were notified by the label on said packages that you were violating the law, and we again give you notice that such action on your part was a wanton, gross, and defiant trespass and outrage, for which you are liable, both criminally and in civil suits, for compensatory, punitive, and vindictive damages, and we demand that you forthwith release all such unlawful stoppage that you have attempted to make, and further desist from these unlawful restraints of interstate trade and commerce, well known to you as a gross violation of rights of our clients under the Constitution of the United States.

Yours respectfully, BRYAN & BRYAN.

Telegram.

CHARLESTON, *April* 21, 1897.

S. W. Vance, Columbia, S. C.:

We demand immediate return of sixty packages wines and liquors marked J. S. Charleston wrongfully seized by one J. M. Scott at South Carolina & Georgia Railroad depot here Mon-
33 day nineteenth April and shipped to John Gaston Columbia by North Eastern railroad same day. We notify you of his malicious trespass and your participation in his malicious trespass if you receive or detain these goods.

Awaiting your reply by telegram.

BRYAN & BRYAN,
Att'ys for Owner.

Letter.

APRIL 21, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We beg to say that we have telegraphed you this day as follows:

CHARLESTON, *April* 21, 1897.

S. W. Vance, Columbia, S. C.:

We demand immediate return of sixty packages wines and liquors marked J. S. Charleston wrongfutly seized by one J. M. Scott at South Carolina & Georgia Railroad depot here Monday nineteenh April and shipped to John Gaston Columbia by North Easton railroad same day. We notify you of his malicious trespass and your participation in his malicious trespass if you receive or detain these goods.

Awaiting your reply by telegram.

BRYAN & BRYAN,
Att'ys for Owner.

We beg to repeat this notice to you requesting an immediate answer.

Yours respectfully, BRYAN & BRYAN.

P. S. We beg to say that we write this letter to you in your individual capacity and notify you that any State law under which you claim to act or under which J. M. Scott claims to act is absolutely null and void under the Constitution of the United States, as
34 you are well aware, and is no shield or shelter for his or your wrong doing.

Yours respectfully, BRYAN & BRYAN.

Letter.

APRIL 23, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We have your telegram this day in reply of our previous demands, as follows:

"The wines and liquors seized by Constable Scott have reached me, and I respectfully refuse to return the same as requested by you."

We beg again to notify you of your malicious and defiant conduct in detaining these goods and warn you that your action is without any lawful authority, and that you will be held responsible therefor by all the pains, punishments, and penalties known to the law for redress of our clients and protection of their rights under the Constitution of the United States.

We demand again return of these goods instantly, and notify you again that the law requires us to deal with you individually and personally, as you have no shadow of legal excuse and cannot shelter yourself behind any advice or direction of any official, whoever he may be.

Yours respectfully, BRYAN & BRYAN.

35 *Letter.*

APRIL 28, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We beg to acknowledge receipt this day of a letter of 26th inst., signed by yourself, S. W. Vance, but to which you have added the word "commissioner."

We beg to refer you to our former letters and telegrams to yourself, in which we have addressed you in your individual and private capacity, and have not had, and do not expect to have, any communication with you in this matter as a commissioner—that is, as a State official acting under any valid law of the State of South Carolina.

We have notified you that any law under which you claim to act in receiving and detaining these packages of wine, after our notice to you in advance, is unconstitutional, null, and void under the Constitution of the United States, which is the paramount and supreme law of this land.

You, therefore, we have told you, had no official sanction or warrant for your participation in the malicious trespass of J. M. Scott, well known to you to be a malicious trespass, because we have distinctly notified you and warned you in advance as to your participation in the same.

We beg now to repeat our notice to you that your conduct in retaining these packages is both malicious and defiant—malicious, in that you are consciously violating the property rights of our clients,

36 breaking up their business, and attempting to deter them in future from exercise of their legal rights and lawful business; defiant, in that you wilfully oppose the known law, declared in principle by the Supreme Court of the United States, after repeated warning from ourselves.

We beg to further notify you that we shall hold you responsible for this continued wrong-doing by all the processes known to the law for the vindication and protection and redress of the rights of our clients and the prevention of your wrong-doing in the future.

We beg further to say to you that this matter has no personal aspect. It is a matter of public law, binding upon all the citizens of this country, and of the common right and privilege of all the citizens of this country, and no one can give you power to be above the law, and your attempt to do so is gross oppression and monstrous to the citizen and his right- guaranteed by the Constitution of the United States.

We again demand of you the delivery of possession of these sixty packages of wines, etc., and upon refusal we beg to repeat our notices and warnings to you.

Yours respectfully, BRYAN & BRYAN.

I, myself, also gave repeated personal, verbal notices to defendants W. N. Bahr and J. M. Scott of their wrong-doing and demanded return of the packages by them.

That notwithstanding said notices the defendant seized and detained said packages of wine, and same was done after full notice, as

aforesaid, and with intent to oppress, humiliate, and intimidate plaintiff and make example of plaintiff, and deter it and
37 others from exercising their right, privilege, and immunities of interstate trade, commerce, and intercourse with citizens and residents of South Carolina in the products of its vineyards secured to them under Constitution and laws of the United States, and with intent to break up the plaintiff's lawful interstate trade and commerce in said products.

The plaintiff was greatly injured in its business and trade by such seizure and detention of its vine products, and lost for two months its trade and business with the citizens and residents of South Carolina; that the plaintiff's actual loss thereby exceeds twelve hundred dollars.

Before, during, and after these seizures intoxicating liquors—*inter alia*, whiskey, beer, wine, and brandy—were being manufactured in the State of South Carolina. The distilleries, breweries, and vineyards were producing spirituous liquors, wine, and beer within the State, and the same was used as a beverage in the State and sold within the State by State agents, known as dispensers, at State liquor shops, known as dispensaries, under the provisions of the so-called State liquor dispensary law (act 1896, 1897), and such liquor-, products of the State of South Carolina, were being exported to other States by its citizens from the State; same liquors, products of other States, were being imported by the State board of control from other States and sold by dispensers in broken packages and unbroken original packages. The imports consisted wholly of such products of other State or States as the board of control chose to import. No products of the Vandercook vineyards have ever been imported by the board of control or at any time offered for sale in State liquor dispensaries in South Carolina.

The United States Government has issued, upon applica-
38 tion, licenses for wholesale and retail liquor dealers under the Revised Statutes of the United States, sec. —, to the State liquor dispensaries throughout the State of South Carolina, and usual license fees have been paid by the State.

Deposition of W. A. Vandercook, President of the Plaintiff Company, on Behalf of Plaintiff.

Since the interlocutory injunction filed in the case on — day of ——, 1897, the W. A. Vandercook Company have established in the cities of Charleston, Columbia, and Greenville, and other cities, agencies for the storing, warehousing, and selling in original, unbroken packages, as imported, wines, &c., products of their California vineyards; the same have not been at any time sold in any town or city where, by the law of the State of South Carolina, all sale of intoxicating liquors by the State dispenser or otherwise is prohibited, and the same are sold in original, unbroken pakages as imported, and not sold to minors or drunkards, not sold to be drunk on the premises or opened on the premises, are sold in the daytime within the legal hours of sale.

We have been and are willing to have the products of our vineyards inspected by the State of South Carolina under any lawful and reasonable system of inspection. The law of the State denies us inspection and sale of our goods in original packages in the State. There has been no demand upon us at any time by any officer of the State for inspection of our goods sold in our agencies in original packages as imported into the State.

The plaintiff, The W. A. Vandercook Co., is a corporation created by and under the laws of the State of California.

39 *Deposition of W. N. Bahr, Defendant.*

All the defendants were State constables duly appointed and commissioned under the act of the General Assembly of South Carolina known as the dispensary law, approved March 6th, 1896, amended March 5th, 1897, and acted as such constables at the time of the seizure, and made the seizures under said acts.

That none of the wines and liquors imported into the State by plaintiff were inspected as required by the provision of the amendment of 1897 to the dispensary law, 1897, and none of them had attached certificates of inspection required by law.

40 At the trial of said cause the defendants S. W. Vance, J. M. Scott, and W. N. Bahr, being the plaintiffs in error herein, prayed the court to hold and find a law as follows, to wit: His honor is requested by the defendants to hold and find as matters of law:

I. That the court has no jurisdiction of the subject-matter of the action.

II. That the plaintiff in the action is not the real party in interest.

III. That by the provisions of the dispensary law of South Carolina, approved March 6, 1896, no action of this kind can be maintained against the defendants, who are State constables and State officers and charged with duties under the law.

IV. That there is a misjoinder of cause of action, in that the plaintiff sues for the recovery of the possession of personal property and also for exemplary damages for the commission of a trespass in taking the same.

V. That the act of the General Assembly of the State of South Carolina approved March 6, 1896, and as amended March 5, 1897, generally known as the dispensary law, is not in conflict with article 9 of the Constitution of the United States and is a lawful exercise of the police power of the State in prohibiting the importation by the plaintiff into the State of South Carolina of all intoxicating liquors, products of other States and foreign countries, for storing and sale in South Carolina, and in authorizing a seizure of such intoxicating liquors so imported into the State by plaintiff or any other person.

VI. That the provisions of the said act are not in conflict with article 9 of the Constitution of the United States, and *is* a valid

exercise of the police power of the State in prohibiting the importation of liquor into the State without an inspection of
41 the same, as required by act of 1896, as amended by act of 1897.

VII. That the provisions of the said act prohibiting the importation of liquors into this State for sale *is* not a valid exercise of the police power of the State within the provisions of the act of Congress of 1890, known as the "Wilson act."

And thereupon the court refused to hold and find as matters of law, as requested by the defendants. Thereupon the defendants duly excepted.

And thereupon, on the — day of November, 1897, the court, without a jury, rendered a judgment for the plaintiff for the personal property or its value and the sum of one thousand dollars damages; and thereafter, to wit, on the — day of November, 1897, judgment for plaintiff was duly entered in said cause in the circuit court of the United States for the district of South Carolina for the personal property or its value and the sum of one thousand damages and costs.

And inasmuch as the aforesaid matter did not appear by verdict of the jury, the defendants, by their counsel, pray that their bill of exceptions may be allowed, and it is accordingly allowed, signed, and sealed by the presiding judge this 18 day of November, A. D. 1897.

CHARLES H. SIMONTON,
Circuit Judge. [L. S.]

(Filed Nov. 18th, 1897.)

42 *Petition and Order Allowing Writ of Error.*

This bill of exceptions having been filed and a writ of error prayed—

Ordered that the writ do issue.

CHARLES H. SIMONTON,
Circuit Judge.

(Filed Nov. 18th, 1897.)

43 *Appeal Bond and Approval.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

Know all men by these presents that we, W. H. Ellerbe and W. H. Timmerman, are held and firmly bound unto W. A. Vandercook

Company in full and just sum of two hundred and fifty dollars, to be paid to the said W. A. Vandercook Company, their certain attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of November, A. D. 1897.

Whereas lately, at a session of the United States circuit court for the district of South Carolina, in a suit depending in the said court between W. A. Vandercook Company and S. W. Vance, J. M. Scott, and W. N. Bahr, a judgment was rendered against the said S. W. Vance, J. M. Scott, and W. N. Bahr, and the said S. W. Vance, J. M. Scott, and W. N. Bahr having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse
44 the judgment in the aforesaid suit, and a citation directed to the said W. A. Vandercook Company, citing and admonishing them to be and appear at the United States Supreme Court, to be holden at Washington, on the day in the said citation mentioned:

Now, the condition of the above obligation is such that if the said S. W. Vance, J. M. Scott, and W. N. Bahr shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

W. H. ELLERBE. [L. S.]
W. H. TIMMERMAN. [L. S.]

Sealed and delivered in the presence of—

W. W. HARRIS.

UNITED STATES OF AMERICA,)
District of South Carolina.)

Personally appeared before me W. H. Ellerbe and W. H. Timmerman, who, after being duly and severally sworn, say that they are freeholders in the State of South Carolina, and are worth the sum of two hundred and fifty dollars over and above all their debts and liabilities and property exempt by law *under* execution.

W. H. ELLERBE.
W. H. TIMMERMAN.

Sworn to and subscribed before me this 17th November, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

Approved:
CHARLES H. SIMONTON,
Circuit Judge.

18th Nov., 1897.

(Filed Nov. 18, 1897.)

45 *Writ of Error.*

THE UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the circuit court of the United States for the district of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between W. A. Vandercook Company, plaintiff, respondent, and S. W. Vance, W. N. Bahr, and J. M. Scott, plaintiffs in error, manifest error hath happened, to the great damage of the said S. W. Vance, W. N. Bahr, and J. M. Scott, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 15th day of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 18th of November, in the year of our Lord one thousand eight hundred and ninety-seven.

Seal U. S. Circuit Court, District of So. Carolina.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

46 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. A. Vandercook Company, plaintiff, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington, on the 15 day of December next, pursuant to a writ of error filed in the clerk's office of the circuit court for the district of South Carolina, wherein S. W. Vance, W. N. Bahr, and J. M. Scott are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the circuit court of the United States for the district of South Carolina, this 19

day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

CHARLES H. SIMONTON,
Circuit Judge.

Service accepted Nov. 18, 1897.

BRYAN & BRYAN,
Pl'ff's Att'ys.

47 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. At Law.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of all the records and proceedings in the case of The W. A. Vandercook Company, plaintiff, against S. W. Vance *et al.*, defendants, rendered as aforesaid, together with the judgment and all things relating to the same, as appears by the records now on file in my office.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., in the district aforesaid, this 20th day of November, A. D. 1897.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 16,728. South Carolina C. C. U. S. Term No., 515. S. W. Vance, W. N. Bahr, & J. M. Scott, plaintiffs in error, *vs.* W. A. Vandercook Company. Filed November 23d, 1897.